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Direct Dial: 207-791-3221

March 8, 2010

**VIA ELECTRONIC & U.S. MAIL**

Susan Lessard, Chair  
Maine Board of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

**Re: Calais LNG**

Dear Chair Lessard:

On January 27, 2010, Calais LNG Project Company, LLC and Calais Pipeline Company, LLC ("Calais LNG") filed with the Department of Environmental Protection its applications for Site Location of Development, Natural Resources Protection, Wastewater Discharge, and Air Emissions permits as well as for a Water Quality Certification. Each of these applications has been accepted for processing by the Department.

I write you now to encourage the Board of Environmental Protection to defer jurisdiction over these applications to the Department, thereby allowing the Department to manage the application review process. To do so will allow the public to review the applications and to participate in an open and robust DEP public hearing process but also ensure a timely decision. Calais LNG believes the Department will be able to afford the public with a sound process that protects the environment as well as the interests of the citizens of the State of Maine.<sup>1</sup>

The applicable criteria for BEP jurisdiction over an application are *The Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR Chapter 2. Pursuant to Section 17(C)(4) of Chapter 2, the Board shall assume jurisdiction over the application if it finds that the application "is of substantial public interest." The rule notes that "[a]n application is of substantial public interest if the project has the potential to affect a broad geographic area or a natural resource of statewide significance, or has generated more than local interest." *Id.* As this portion of the rules is written, however, the phrase "substantial public interest," standing alone, itself is not a trigger requiring BEP to take jurisdiction. Rather, it is measured instead by whether the proposal:

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<sup>1</sup> This letter follows-up on my letter to you on the same subject dated February 10, 2010, attached hereto as Exhibit A.

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- (1) has the potential to affect a broad geographic area;
- (2) has the potential to affect a natural resource of statewide significance; or
- (3) has generated more than local interest.

Each of the three elements must be assessed independently.

The Project Will Not Have a Potential to Affect a Broad Geographic Area.

The Calais LNG Project is proposed for construction and operation entirely within eastern Washington County. The terminal site is placed on a 135 acre parcel east of (and is not visible from) U.S. Route 1 and is located roughly 7 miles south of the center of the City of Calais. Calais LNG's sendout pipeline will travel 20.7 miles (entirely underground), passing through the eastern Washington County communities of Calais, Baileyville and Baring Plantation before joining the Maritimes & Northeast pipeline in Princeton, Maine. Hence, Calais LNG's affect will be limited to the geographic area of eastern Washington County as opposed to any "broad geographic area."<sup>2</sup> The Project's most direct impacts are situated within Washington County and therefore it should not be considered as impacting a "broad" geographic area.

The Project Will Not Have a Potential to Affect Natural Resources of Statewide Significance.

Calais LNG has undertaken over two years of detailed scientific studies of the natural resources associated with all aspects of the project. This has included, but is not limited to: field delineation of wetlands, field studies of intertidal, subtidal and open water areas, site-specific benthic studies, multi-beam hydrographic data collection, water quality profile assessments, surficial sediment sampling, acoustic modeling, visual assessments, lobster studies (including trap census, video surveys, trapping, tagging and an early benthic phase lobster survey), a year-long ichthyoplankton and zooplankton study, vernal pool studies, analysis of essential fish habitat, potential wildlife resources evaluation and review of rare, threatened or endangered species. The overall conclusion of those studies is that while there will be some temporary, local impacts, in general there will not be longer-term adverse impacts to any resources.

In particular, the Site itself will be developed on 135 acres of land with mixed forest, meadow and wetland features. The Sendout Pipeline will transit 20.7 miles of forested uplands, grasslands and wetland. Ultimately, however, no permanent loss of wetland acreage is expected from pipeline construction and operation. The operation of the Terminal Site is expected to have little to no effect on intertidal wetlands or subtidal vegetation, and the Terminal Site itself will only result in 2.1 acres of permanent wetland loss. Due to careful design and coordination with the Department and the U.S. Army Corps of Engineers, no other permanent wetland loss is

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<sup>2</sup> It should be noted that the term "broad geographic area" is not defined under DEP rules. However, as discussed below, the BEP did not assume jurisdiction over a project that will traverse and impact 73 communities. The Calais LNG project only traverses through four communities.

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expected relating to the entire project. In addition, no impact on the long term quality of the St. Croix River is expected from the minimal disturbances that may be created during pier construction or due to vessel traffic. Further, Calais LNG will make use of numerous mitigation measures, techniques and best management practices to avoid construction or operational impacts. Also, vessel traffic along the transit route – including recreational, tourism-based and commercial vessel traffic – will not be significantly impacted by LNG vessel traffic due to vessel speed, the width of the waterway, and transit management efforts. Last, based upon DEP staff's recommendations, Calais LNG significantly changed the placement of various terminal structures, and moved segments of its pipeline, in order to further avoid various vernal pools, a deer wintering yard and a large, established beaver dam. In sum, Calais LNG will not unreasonably adversely affect natural resources in and around its proposed Site.

The Project has not Generated More than Local Interest.

Calais LNG has received large-scale and sustained local support by the City of Calais and its residents over the past several years. The Project has been unanimously endorsed by the Calais City Council as well as by the Washington County Commissioners. Numerous positive, public meetings and events have taken place locally. For instance, at the initial Federal Energy Regulatory Commission's ("FERC") scoping meeting in December 2008, support for the Project overwhelmingly outnumbered opposition (and of the three persons who spoke against the project, two were from Canada). During the March 2009 public information meeting held as required under the Department's procedural rules, and which attracted approximately 240 interested citizens, not a single person spoke in opposition to the Calais LNG Project. Residents from other local communities, including Alexander, Charlotte, Baileyville, Cutler, Perry and Robbinston have also vocalized support for the Project.<sup>3</sup>

The vast majority of Calais LNG's opponents are local to Washington County. In her March 2, 2010 email to the Commissioner and the Board, Linda Godfrey, herself a resident of Eastport and the Coordinator for Save Passamaquoddy Bay ("SPB"), listed a number of individuals who allegedly oppose LNG in Passamaquoddy Bay. Those individuals reside in the following Washington County communities: Eastport, Sipayik/Pleasant Point, Perry, Pembroke, Trescot, Whiting, Lubec, Robbinston, Indian Township and Machias. The majority of the other individuals listed in that letter reside in Canada – outside the scope of the Board's jurisdiction. Two other opponents listed reside outside of Washington County (in Stockton Spring and South Thomaston) and another two do not even live in Maine. The vast majority of SPB's members

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<sup>3</sup> The fact that the Department and the Board have received a number of letters of support (for a robust but expedited DEP-led process) from Washington County government leaders, legislators, City of Calais officials, business owners, fishermen and local citizens does not mean that there is substantial public interest in the project for purposes of consideration as to whether BEP should assume jurisdiction over the Project's applications. It is counter-intuitive to assert that such broad public support for a project makes it one of significant public interest under the DEP Rules Chapter 2 criteria.

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are local to Downeast Maine, and therefore the Project has not generated more than local interest.<sup>4</sup>

The sole entity expressing interest in these proceedings that is not local is the Conservation Law Foundation (“CLF”). CLF, which has long been a proponent of switching to clean-burning natural gas in New England, is primarily focused on the need for this project in light of other proposed and existing natural gas supplies. Proceedings at the FERC are best suited to address the need for this project, not the Maine BEP. CLF has intervened in those FERC proceedings and will have a full opportunity to participate in the National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS) process in that forum. CLF also will have an opportunity to participate in DEP-managed meetings and hearings in the state application proceedings.

Last, this Project (like the others proposed for the region) has attracted attention due to the fact that its transit route, through Head Harbor Passage, has generated interest at the Federal diplomatic levels in both Canada and the United States. That diplomatic issue, however, is not relevant to the Project’s state application process. In fact, the Board itself held, in the Downeast LNG application process, that issues relating to right, title or interest through Head Harbour Passage would not be considered. (*See* Board of Environmental Protection Meeting Minutes for May 17, 2007 meeting at pg. 6). This decision was recently echoed by the Department when it refused SPB’s request to deem Calais LNG’s applications as incomplete. (*See* letter by DEP Project Manager Becky Blais to Attorney Robert Shems, dated February 23, 2010, attached hereto as exhibit B). Hence, much of the attention paid to the Project that SPB attempts to use as evidence of broad public interest is of a nature that is simply outside the purview of the state review process of Calais LNG’s state applications.

Prior Decisions Regarding Board Jurisdiction Over LNG Projects Do Not Mandate a Similar Result.

The fact that the Board took jurisdiction over two previous LNG projects does not mandate that it take jurisdiction over a third.<sup>5</sup> Over the past two-plus years the public, the Department, the staff of the two key consulting agencies for the State (IF&W and DMR), and the U.S. Army Corps of Engineers have had numerous opportunities to become well-versed in the

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<sup>4</sup> It should also be noted that Roosevelt Campobello International Park Commission is also located locally, and has intervened in the FERC proceedings regarding this project as well.

<sup>5</sup> The DEP’s January 18, 2007 memorandum recommending the Board take jurisdiction over the Downeast LNG applications stated that the “proposed project is of substantial public interest and does have the potential to affect a broad geographic area. This conclusion is backed by the ongoing communications this agency has had with numerous interest groups and individuals throughout the federal processes that have been underway since January 2006.” Calais LNG contends this recommendation (and the nearly identical one for Quoddy Bay LNG) is flawed because the DEP fails to link how communications about a Federal process impacts a “broad geographic area” and, moreover, that recommendation utilizes “significant public interest” as if it were its own defined trigger for jurisdiction, which it is not. *See* 06-096 Chapter 2, Section 17(c)(4) and discussion at page 1, above.

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issues presented by LNG development. Calais LNG has learned from the previous two projects and made every effort to address issues that were presented in those instances. Taken together, the three projects' technologies are essentially the same, many of the issues are the same and the region where they have been proposed is the same. Those elements that are unique to Calais LNG's site location can be adequately handled by the Department, due to the fact that the Project undertook extremely comprehensive studies and submitted scientifically robust permit applications to the Department. After hundreds (if not thousands) of hours of LNG application experience, the Department staff can process and scrutinize our application materials with practiced ease.

As I noted to you in my letter of February 10, 2010, the Board has exercised its discretion not to accept jurisdiction over a large-scale project that quite clearly affected a broad geographic area and attracted more than local interest. It declined to take jurisdiction over Central Maine Power's Maine Power Reliability Project ("MPRP"), which is slated to impact 73 communities across the state as it upgrades or builds new power lines over 370 linear miles. In contrast, Calais LNG impacts four communities over a distance of 20.7 miles, all within Washington County. The MPRP process is extremely controversial, prompting 130 intervenors to become involved in its review before the Maine PUC. From a consistency and comparability perspective, therefore, Calais LNG warrants that same treatment as the MPRP and the Board should not assume jurisdiction.

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Calais LNG seeks to avoid a procedural situation that permits a long and drawn-out process that can be utilized by project opponents to interpose delay. As thoughtful and well-intended as the BEP's procedural rules are, those rules almost ensure that the formal permitting cycle for a major project -- after the applications are submitted for review by DEP -- will take well over a year to complete. That is simply too long a process in today's economic climate. Such a lengthy period is not necessary to protect the public interest. In fact, an extended BEP permitting process is not in the public interest when the public interest can be fully protected by Department processes.

Calais LNG will still have its application reviewed by the Maine DEP -- and also be subjected to the rigors of the NEPA review process at the Federal level. The public and interested parties will have an adequate opportunity for input to the application process. In fact, as noted, Chapter 2 of the DEP's rules sets up a procedure that allows the Department itself to undertake either public hearings or public meetings -- a process that Calais LNG would not object to.<sup>6</sup>

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<sup>6</sup> In a March 3, 2010 letter to Ms. Blais of the DEP, in fact, attorneys for SPB requested that the DEP hold a public hearing if the BEP did not assume jurisdiction.

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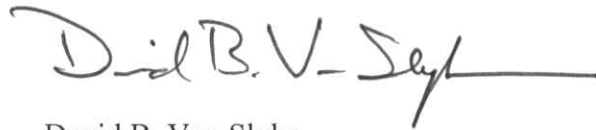
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In summary, we urge the Board to defer jurisdiction over the Calais LNG applications to the DEP. The three criteria for significant public interest have not been triggered by the Project. The Department has the institutional knowledge to review these applications in a detailed and thorough manner. The public will be actively involved in the Department's process and have ample opportunity to be heard. The public interest is not served by requiring extended proceedings that may result from the BEP procedures currently in place. Such an extended process is not necessary to protect the public interest.<sup>7</sup>

Very truly yours,

A handwritten signature in dark ink, appearing to read "David B. Van Slyke", with a long horizontal flourish extending to the right.

David B. Van Slyke

DBV/jac

Enclosures (2)

cc: Commissioner David P. Littell  
Becky Blais, DEP

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<sup>7</sup> If the Board nonetheless does decide to take jurisdiction over these applications, Calais LNG asks that the Board set a schedule of no less than seven (7) months from the date of taking jurisdiction to issuance of its permitting decision. Based upon the schedule ultimately followed in the Downeast LNG proceedings and recent experience of the Board in handling a complex adjudicatory proceeding, Calais LNG believes this to be an adequate amount of time to, among other things, work through procedural issues, file testimony, hold a hearing (including involving the public) and have the Board render a decision.



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February 10, 2010

**VIA HAND DELIVERY**

Susan Lessard, Chair  
Maine Board of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

**Re: Calais LNG**

Dear Chair Lessard:

Calais LNG Project Company, LLC and Calais Pipeline Company, LLC ("Calais LNG") recently filed with the Department its applications for Site Location of Development, Natural Resources Protection, Wastewater Discharge, and Air Emissions permits as well as for a Water Quality Certification. These applications are extremely thorough, reflecting years of careful research and constructive collaboration with the resource agencies. Calais LNG is deeply appreciative of the excellent support and guidance that the DEP staff in all three Bureaus has provided to our project team.

The purpose of this letter is to request that the Board refrain from taking jurisdiction over the Calais Project and that the Department be allowed to process these applications. This is not a reflection on the Board. Rather, it is a reflection on how much the Department has learned about LNG and Passamaquoddy Bay in recent years and the most effective way to protect the public interest in this instance. Moreover, based upon our two years of environmental studies and preparation of exhaustive federal and state applications, including careful review of the studies and permitting actions of two other LNG projects proposed for Passamaquoddy Bay, we believe both the public and public agencies across the board are well informed about the relevant issues. We, therefore, strongly believe that the licensing of this project is appropriately managed by the Department, and that the Department will be able to afford the public with a sound process that protects the environment as well as the interests of the citizens of the State of Maine.

We urge that the Board consider the following factors when reviewing this request:

**Preti Flaherty Beliveau & Pachios LLP** Attorneys at Law

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45 Memorial Circle | Augusta, ME 04330 | TEL 207.623.5300 | FAX 207.623.2914 | Mailing address: P.O. Box 1058 | Augusta, ME 04332-1058

Calais LNG has extremely strong support from officials at the local, regional and state-level. The Calais LNG Project has been well received in the community, and has the strong endorsement of the City of Calais and Washington County. The Project has been unanimously endorsed by the Calais City Council several times over the last several years as well as by the Washington County Commissioners. In addition, all of the Washington County legislators, including Senator Raye, support the project. Further, Governor Baldacci has long been in favor of siting an LNG receiving terminal in Washington County so long as the local community is supportive of the project, as it is. In speaking of LNG in Washington County, Governor Baldacci has been quoted as saying that "the proposed terminals in Washington County give economic hope to a region that needs new industry. All of these projects will create thousands of good-paying, private-sector jobs in Maine just when we need them the most." The attached binder, at Tabs 1-3 and 5, contains information reflecting this strong local, regional and state-level support. This extensive local support shows the public understands and welcomes the project and that the project is not controversial.

The local citizenry has been virtually unanimous in its enthusiasm for the Project. At the initial scoping meeting sponsored by FERC in December 2008, support for the Project overwhelmingly outnumbered opposition (and of the three persons who spoke against the project, two were from Canada). Even more remarkable was the March 2009 public information meeting held as required under the Department's procedural rules. During the five-hour meeting, which attracted approximately 240 interested citizens, not a single person spoke in opposition to the Calais LNG Project. DEP staff (Jim Cassida and Becky Blais) were present and can attest to the unprecedented community support shown for the project. See attached binder at Tabs 3, 4 and 9. Thus, the DEP process to date reflects the public support for the noncontroversial nature of the project.

Calais LNG has applied the lessons learned from the experiences of the other two LNG projects proposed to be located in Washington County. Calais LNG is the third LNG receiving terminal that has undertaken scientific studies in eastern Washington County/Passamaquoddy Bay region. We estimate that over \$40M has been expended in studying this region and its natural resources, and at least one DEIS (for Downeast LNG) has already been prepared. Problematic issues raised regarding those projects have been avoided or the necessary efforts have been made by Calais LNG to address them. We have undertaken extremely comprehensive and collaborative studies resulting in the submission of scientifically robust permit applications. Further, Calais LNG has undertaken a significant outreach effort to both the regulators and those local/regional/national constituencies that have expressed reservations regarding the other Washington County LNG projects -- all in an effort to understand and address their concerns. Our project approach, and the DEP (and FERC) applications, reflect our efforts in that regard, beginning with the selection of what has been termed the best site for an LNG facility on the eastern seaboard. By way of example, Calais LNG took seriously the comments and feedback of Department staff, most especially regarding ideas and suggestions relating to terminal design and the preferred pipeline route. Based upon staff's concerns and recommendations, we significantly changed the placement of



various terminal buildings and structures, and literally moved segments of our pipeline, in order to avoid a number of vernal pools and significant vernal pools, a deer wintering yard and a large, established beaver dam.

The Department is fully up to speed on LNG projects. DEP staff and management have devoted hundreds (if not thousands) of hours of effort to understand the issues associated with LNG receiving terminals and sendout pipelines, virtually all in the context of applications that involve project sites close to Calais LNG's proposed location. The projects' technologies are essentially the same, many of the issues are the same and the region where they have been proposed is the same -- little is new here. Further, the Department's staff, and the staff of the two key consulting agencies for the state (IF&W and DMR), as well as the Army Corps, are sophisticated with regard to the level of inquiry concerning these projects. Those individuals and entities have sought detailed information during the process leading up to the filing of these applications, and that information has been willingly and promptly provided by Calais LNG.

Calais LNG's proposed terminal and pipeline project has outstanding site characteristics. Our project site is geographically isolated and is not visible from U.S. Route 1. The bathymetry of the St. Croix River in this area allows the pier to be less than one-thousand feet in length and will have no associated dredging. The topography of the site is such that nearby neighbors will be minimally impacted by visual or noise effects from the terminal. The send-out pipeline is only 20.7 miles in length and will follow existing utility corridors for a good portion of that length. The terminal site is across from Bayside Marine Terminal and an industrial quarry. The natural resource impacts are exceedingly low for a project of this size (e.g., only 2.1 acres of permanent wetland loss and there will be no significant vernal pools impacted). Again, this will diminish any possibility of project controversy.

Calais LNG has very strong financial backing from an entity with a strong environmental ethic. Both of the Calais LNG companies have as their Managing Member GS Power Holdings, Inc., a wholly-owned direct subsidiary of Goldman Sachs Group, Inc. ("Goldman Sachs"). Goldman Sachs' environmental and sustainability policies are comprehensive and extremely important to the Company. This has ensured thorough project studies.

The project should be handled by the DEP in a manner that is comparable to other large projects that have needed multiple licenses. The Department itself has handled projects such as this without recommending that the Board take jurisdiction. The applications for at least one of those projects -- Central Maine Power's Maine Power Reliability Project ("MPRP") -- is currently being considered solely by the Department, after a recommendation by the DEP to the BEP that it not take jurisdiction. A comparison of various different metrics of the MPRP with the Calais LNG project may be instructive:

	<b>MPRP</b>	<b>Calais LNG</b>
Communities Project Traverses	73	4
Impacts from Cutting in Significant Wildlife Habitat	~125 acres	~2.0 acres
Distance of Linear Aspect of Project	360 miles	20.7 miles
Wetlands Lost	14 acres (of which 2.63 are wetlands of special significance)	2.1 acres
Stream Crossings	804 waterbodies intersected	21 total crossings
Stream Alterations (linear feet)	1,200 feet	0 feet
Significant Vernal Pools (SVP) Impacted	85 pools (and ~70 acres of land within 250 feet of SVPs impacted)	0 pools (and <u>no</u> pools and no land within 250 feet of SVPs impacted)
Number of Interested Parties	130+ intervenors at the PUC	15 intervenors at FERC
Environmental Regulatory Agencies Reviewing Project	Maine DEP Maine IF&W U. S. Army Corps	Maine DEP Maine IF&W Maine DMR Maine SPO U.S. Army Corps FERC (including NEPA and EIS Review) U.S. Dept of Interior U.S. Fish & Wildlife- U.S. Park Service NOAA
Estimated Project Costs	\$1.55 Billion	\$920 Million

Further to this comparison, the MPRP will have its project reviewed only at the Maine PUC and the Maine DEP. The PUC proceedings do not involve regulatory review of environmental issues – the exclusive focus there is on need for the project. Calais LNG, on the other hand, will not only have its application reviewed by the Maine DEP, it will also be subjected to the rigors of a National Environmental Policy Act (NEPA) review process at the Federal Energy Regulatory Commission (FERC). That wholly separate process provides a second very robust layer of environmental review -- including extensive opportunity for the public, as well as Federal and State agencies, to intervene in and review/comment on the project. The MPRP not only is not being reviewed by the BEP, it is not subject to that separate Federal NEPA review, either.

In addition, the MPRP project is highly controversial and has received state-wide, largely negative media attention for a sustained period. Further, it is one of the most (if not the most) highly contested proceedings ever managed by the PUC – over 130 parties have intervened in that proceeding to date and the proceeding will have consumed two years. And yet the Department has recommended, and the BEP has concurred, that the MPRP project will not be heard by the Board. From a consistency and comparability perspective, therefore, the Calais LNG project warrants that same treatment.

There is a definite need for this project from both an economic and an environmental perspective. There is a strong possibility that BEP jurisdiction may lead to delay that could postpone an important economic stimulus opportunity that will help put hundreds of Mainers to work and create significant economic benefits to Washington County – an area of the State in desperate need of an economic transfusion. Further, having local LNG available to be trucked to area manufacturers (e.g., the Domtar Mill in Baileyville and Lincoln Paper and Tissue in Lincoln) will provide a potentially life-saving economic boost to those facilities that are heavily dependant on fuel oil for energy production. Use of natural gas at facilities such as Domtar and Lincoln also will result in those facilities' air emissions being reduced significantly.

Natural gas determines the price of electricity in Maine 90% of the year. Maine gas and electricity consumers pay the highest prices for natural gas in the continental United States. This is because natural gas pipelines in Southern New England are and will remain inadequate to meet Maine's needs at peak times. Only LNG storage located in Maine will change this. Supplies at Calais LNG will lower costs to gas consumers by up to 15% per year, saving up to \$100 million/year in electricity costs alone. Calais LNG will also facilitate fuel switching from oil to gas. Maine's highest per capita consumption of oil in the nation is a severe burden to Maine's economy and its environment.

DEP is best suited to review these applications. In this circumstance, the DEP, with David Littell as Commissioner who serves as Chair of RGGI Inc. (the coordinating administration of the greenhouse gas cap and trade system for nine northeastern states, the first in the U.S.), is the optimal place for consideration and decision-making regarding these applications. This project is a critical part of the overall energy future of Maine and New England. In particular, natural gas is the best practical option for balancing wind, due to its quick-start and quick-ramp abilities. Commissioner Littell's

work with RGGI over the past half decade or more makes him uniquely qualified to appreciate that Calais LNG can support these important wind development objectives by substantially improving the energy storage capacity in the region. Hence, the Department has a very thorough understanding of that path to a cleaner energy future, and as such that expertise is best suited to be applied to this situation and these applications.

We emphasize that the issue of need for LNG in Maine is extraordinarily technical and is not a conventional environmental issue. The issue directly involves the operation of the ISO-New England electrical grid, enormous technical studies performed by ISO-NE and other power utilities, the fuel switching rate from oil and coal to gas and the rate of construction of gas plants. The DEP's permitting of gas plants and RGGI involvement, and indeed its leadership of RGGI, makes Commissioner Littell and the Department the most efficient way to protect the public interest on these issues.

The BEP process will provide a forum that largely advantages project opponents. Holding extended hearings with numerous procedural impediments will occasion significant delay that will only benefit competing Canadian energy projects which seek to defeat the Calais LNG Project and will not further the energy and environmental goals of the State of Maine, including achievement of its 2000mw and 3000mw wind targets. This point has been repeatedly and emphatically communicated to us by local supporters in Calais who deeply resent the Canadian government's intransigence over the Head Harbour passage issue. Calais LNG is an outstanding project that is desperately needed for a number of reasons (e.g., increasing the availability and reducing the cost of natural gas and electricity in Maine, reducing air emissions in Maine and New England, helping stabilize the electrical grid, balancing wind power generation through natural gas fired generation, and providing economic opportunities in Washington County). Allowing process to override substance in a manner that results in significant project delay should not be countenanced, especially if that process is commandeered by interests outside of Maine, and is not warranted for all of the reasons explained above.

Last, the DEP itself has the ability to hold public meetings and/or hearings on applications that it is reviewing. If the Board is concerned about ensuring that the public and interested parties have an adequate opportunity for input to the application process, Chapter 2 of the DEP's rules sets up a procedure that allows the Department itself to undertake either public hearings or public meetings. Calais LNG has undertaken several years of public outreach on this project and would welcome further opportunity to explain the project to the public and to have the public and interested parties (both opponents and proponents) review and comment on its applications. What Calais LNG seeks to avoid, however, is entering into a procedural situation that permits a long and drawn-out process that can be utilized by project opponents to interpose delay. As thoughtful and well-intended as the BEP's procedural rules are, those rules almost ensure that the formal permitting cycle for a major project -- after the applications are submitted for review by DEP -- will take 12 to 18 months. That is simply too long a process in today's economic climate. Such a lengthy period is not necessary to protect the public interest. In fact, use of an extended permitting process, as may be necessitated by Board

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Sue Lessard, Board Chair  
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jurisdiction, is not in the public interest when the public interest can be fully protected by Department processes.

In summary, the Calais LNG Project is not controversial, especially in comparison to the MPRP. Public agencies have previously analyzed the relevant issues in considering other LNG projects located nearby. Calais LNG has learned from the experiences of these other applicants and from agency concerns and has worked closely with every agency in conducting thorough studies and exhaustive federal and state applications. Unlike the MPRP, Calais LNG will be subject to environmental review by multiple federal agencies, including a full environmental impact statement process. The Department is uniquely qualified to deal directly with the highly technical gas and electricity issues, assuring full protection of the public interest. The public interest is not served by requiring extended proceedings which may result from BEP procedures and such extended review is not necessary to protect the public interest.

Again, we understand and appreciate the important role the Board of Environmental Protection plays in formulating environmental policy for the State. In this particular instance, however, we firmly believe that the Department is the better entity to manage Calais LNG's application review process. The Calais LNG Project team welcomes public scrutiny of these applications and further welcomes presenting those applications at DEP-managed public meetings or hearings in Washington County or elsewhere.

Very truly yours,



David B. Van Slyke

Enclosure

cc: Commissioner David P. Littell



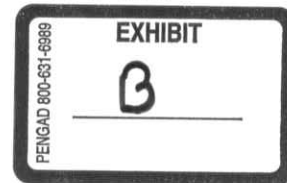


JOHN ELIAS BALDACCI

GOVERNOR

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

FEB 24 2010



DAVID P. LITTELL

COMMISSIONER

February 23, 2010

Mr. Ronald Shems  
Shems, Dunkiel, Raubvogel & Saunders, PLLC  
91 College Street  
Burlington, VT 05401

**RE: Site Location of Development Act and Natural Resources Protection Act Applications  
for the proposed Calais LNG Facility in Calais, Maine**

Dear Mr. Shems:

The Department is in receipt of your letter, dated February 17, 2010, on behalf of Nulankeyutomonon Nkihtahkomikumon and Save Passamaquoddy Bay-U.S. regarding the transit of LNG vessels through Harbor Head Passage. In your letter, you argue that because Calais LNG vessels do not have permission from Canada to pass through Head Harbor Passage, Calais LNG has not demonstrated sufficient title, right and interest (TRI) to have its permit applications processed by the Department.

Calais LNG has submitted a letter in reply to the arguments raised, from its attorney, David Van Slyke, dated Feb. 17, 2010. Calais LNG argues that it is not required to demonstrate TRI for the passage of LNG vessels through these Canadian waters because the public is entitled to pass through them by virtue of a right of innocent passage.

As you are aware, when the request was made that the Downeast LNG permit applications be denied based on a failure to demonstrate adequate title, right or interest for the tankers to use these same waters during the Board of Environmental Protection's processing of those applications in April of 2007, the Board denied the motion to deny the applications on that basis and continued to process the applications. Here the request is not that the Calais LNG applications be denied, but rather returned for failure to demonstrate adequate TRI. However, the sufficiency of the TRI demonstration in this situation is an issue on which the Department may take some guidance from the Board, as is envisioned by 38 M.R.S. section 341-D(2). Moreover, the Department is not in a position to resolve and does not have jurisdiction to resolve the legal dispute with regard to whether LNG tankers headed to the proposed Calais LNG facility would have the right to transit through the passage at issue. This is an issue currently in dispute between the U.S. Department of State and Canadian governmental entities, each of which has expressed an opposing view.

Chapter 2(11)(D) of the Department's regulations provides that an applicant must demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property proposed for

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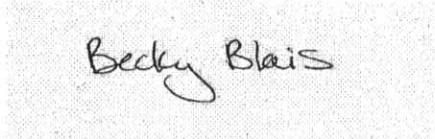
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development or use, and the regulation lists six methods by which TRI may be demonstrated, but it specifically allows other methods of making a sufficient demonstration. Based on the information in the record and in light of the Board's previous decision on a similar issue, the Department has accepted the Calais LNG applications as complete for processing.

Please feel free to call me at (207) 287-7780 or e-mail me at [becky.blais@maine.gov](mailto:becky.blais@maine.gov) if you have any questions regarding this project.

Sincerely,

A handwritten signature in cursive script that reads "Becky Blais". The signature is written in dark ink on a light-colored, textured background.

Becky Blais  
Project Manager  
Division of Land Resource Regulation  
Bureau of Land & Water Quality

Cc: File

David Van Slyke, PretiFlaherty  
Tom Eschner, Woodard & Curran  
Art Gelber, Calais LNG Project Company, LLC  
Jim Dusch, MEDEP